



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUN 01 2015

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Uniform Issue List: 408.03-00

T:EP:RA:T3

Legend:

Taxpayer A =

Individual B =

IRA X =

Financial Institution C =

Company D =

Company E =

Amount 1 =

Dear :

This is in response to your request dated September 17, 2014, as supplemented by correspondence dated November 25, 2014, December 2, 2014, and December 12, 2014, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that on May 23, 2011, he received a distribution from IRA X totaling Amount 1 from Financial Institution C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his reliance on erroneous advice given to him by Individual B of Financial Institution C.

In 2008, Taxpayer A invested a portion of IRA X in Company D stock. Prior to engaging in the transaction, Taxpayer A consulted with Financial Institution C, his IRA custodian, and attempted to structure the investment so that it would not result in a taxable distribution from IRA X. A Financial Institution C financial advisor told Taxpayer A to take a distribution from IRA X, purchase Company D stock, and then return the purchased Company D stock as an investment in IRA X within 60-days of the distribution. Taxpayer A followed these instructions and completed the investment and Company D stock was held through IRA X.

In 2011, Taxpayer A sought to make an investment through IRA X similar to the successful investment he had made in 2008.

On May 23, 2011, Taxpayer A took a distribution of Amount 1 from IRA X and purchased Company E stock. On June 30, 2011, Company E issued the stock certificate designating Taxpayer A's IRA as owner of the shares. On July 2, 2011, Taxpayer A delivered the stock certificate to Individual B. Taxpayer A relied on the advice of Individual B that the distribution of Amount 1 and its investment in Company E stock would not be treated as a taxable distribution and the investment would be accepted by Financial Institution C as an investment in IRA X. However, Financial Institution C refused to accept Company E stock as an investment in IRA X due to Company F's change in its market capitalization requirements. Taxpayer A then asked Individual B how to proceed. Individual B advised Taxpayer A that since the stock certificate was titled as Taxpayer A's IRA, Taxpayer A would not have a problem with the 60-day rollover requirement and further advised Taxpayer A to keep the Company E stock certificate in a safe place. Relying on Individual B's advice Taxpayer A believed no further steps were needed to comply with the 60-day rollover requirement.

In March 2012, when preparing Taxpayer A's 2011 federal tax return, his certified public accountant asked Taxpayer A whether he had taken a distribution from IRA X. Taxpayer A explained his investment in Company E stock and asserted that the May 23, 2011, distribution of Amount 1 was not taxable. In October 2013, Taxpayer A received a Notice of Deficiency from the Service.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income

by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for

example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was due to his reliance on erroneous advice given to him by Individual B of Financial Institution C.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact _____ at () . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,


Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: